IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 146 OF 2006

SHRI MADHUKAR NARAYAN JOSHI, PONDA GOA. ....Petitioner

Versus

EMPLOYEES PROVIDENT FUND ORGANISATION AND 2 ORS., ...Respondents

Mr.A.V. Nigalye, Advocate for the Petitioner.
Mr. P. P. Singh For R-1 & 2.
Mr. M.S.Sonak, Advocate for R.3.

Coram:- SMT. RANJANA DESAI &
N. A. BRITTO, JJ.

Date:- 19th June, 2006

P.C. :-

1. Heard the learned counsel for the parties.

2. It is the case of the petitioner that he was employed with respondent 3 on 1/11/1987. In April, 2000, he attained the age of 58 years. He was granted extension of service for two years. On 30/4/2002, he retired on superannuation. According to the petitioner, the 3rd respondent establishment is governed by the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, "the said Act") and the Scheme framed thereunder. It is the case of the petitioner that respondent 3 was covered under the said Act much prior to 1987. The respondents ,therefore, ought to have made the Scheme under the said Act applicable to him from the date of his joining the service i.e. 1/11/1987. However, respondent 2 i.e. the Regional Provident Fund Commissioner brought respondent 3 under the purview of the said Act from 1/12/1991. According to the petitioner, this act of respondent 2 is arbitrary and illegal. The petitioner's case is that after his retirement on 30/4/2000,

respondent 3 forwarded requisite form No.10-D for monthly pension of the petitioner to respondent 2. By letter dated 28/10/2004, respondent 2 informed respondent 3 that the petitioner is not entitled for pension.

3. The case of respondent 2 is that the petitioner is not entitled for pension because he had not rendered pensionable service of 10 years because he was employed with respondent 3 on 1/11/1987 and he retired on superannuation on 30/4/2002. According to the petitioner, this approach is wrong because his extended service of two years must be taken into account while calculating the pensionable service. The petitioner contends that he had joined the service of respondent 3 in the year 1987. He retired on superannuation in April, 2000. Hence, he had in fact completed 16 years of service in the establishment of respondent 3 and, therefore, he was eligible for pension as qualifying service for pension is 10 years. The petitioner has, therefore, prayed that a direction be issued to respondents 2 and 3 to grant short service pension to the petitioner from the date of his retirement.

4. The petitioner's case is that the 2nd respondent's action of bringing the 3rd respondent establishment under the purview of the said Act from 1/12/1991 is illegal because respondent 3 was covered under the said Act much prior to year 1987. The order dated 8/6/2000 passed by the Regional Provident Fund Commissioner bringing the 3rd respondent establishment within the purview of the said Act is annexed to the petition. That order is the basis of the petitioner's grievance.

5. In this connection, it is necessary to read section 7I of the said Act. So far it is relevant, section 7I reads as under :

"7I. Appeals to Tribunal.- (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Cental Government or any authority, under the proviso to sub-section (3), or sub-section (4) of section 1, or section 3, or sub-section (1) of section 7A,

or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order."

6. The petitioner's case will be covered by section 7A(1)(a), which reads thus :

"7A. Determination of moneys due from employers. - (1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order, -

(a) In a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute. ..."

7. In this case, the Regional Provident Fund Commissioner has made the said Act applicable to respondent 3. If the petitioner is aggrieved by the said order, he can appeal to the Tribunal under section 7I of the said Act. Since an alternate remedy is available to the petitioner, we cannot entertain the present petition.

8. The learned counsel for the petitioner states that he was not aware of the order dated 8/6/2000. He came to know about it only after retirement and, hence, he could not challenge it before the Tribunal in time. He submitted that the said appeal may not be enertained on the ground of limitation.

9. We do not want to go into this aspect of the matter. We only observe that if the petitioner files an appeal to the Tribunal, in the circumstances of the case and considering the fact that the petitioner is 62 years old, the

Tribunal may consider taking a kindly view of the matter and decide the appeal in accordance with law. We have, however, not expressed any opinion on the merits of the case.

10. The petition is rejected.

SMT. RANJANA DESAI, J.

N. A. BRITTO, J.

sl.